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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Sixteenth session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 29 April 1997, at 3 p.m.

Chairperson: Mr. ALSTON

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The meeting was called to order at 3.15 p.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 5)

Draft General Comment (HR/CESCR/NONE/1996/5)

1. The CHAIRPERSON invited the Committee to resume its consideration of the draft general comment on the right to housing (art. 11, para. 1, of the Covenant): forced evictions, which it had begun at a previous session.

2. He explained to the new members of the Committee that the great amount of information which had reached the Committee concerning widespread and large-scale eviction of communities, carried out without legal precautions being taken or legal requirements being met, had prompted the preparation of a general comment on the subject.

Paragraph 1

3. Mr. TEXIER suggested that the word "statué" in the seventh line of the French version of the text should be replaced by "estimé".

Paragraph 2

4. Mrs. JIMENEZ BUTRAGUEÑO proposed that the words "in advance" should be inserted after the words "are made" in the second sentence, in order to stress the need for timely measures.

5. The CHAIRPERSON observed that the second sentence of paragraph 2 was a quotation from the 1976 Vancouver Declaration on Human Settlements. Such an addition would therefore constitute a misrepresentation of the content of the Declaration.

Paragraph 3

6. Mr. TEXIER said that while the term "forced eviction" was not very satisfactory because it introduced elements of force and illegality, it was nevertheless preferable to retain the existing wording of the paragraph. The paragraph in question clarified the term "forced eviction" by defining the concept in the context of the general comment. He was prepared to participate in the work of any drafting group that might be deemed necessary.

7. Mr. PILLAY supported Mr. Texier's suggestion that the wording be left unchanged.

8. Mr. RATTRAY said the issue of forced evictions concerned both the substantive and the procedural rights of persons. However, regardless of whether the victims of eviction had rights of occupation or not, the manner in which the eviction was carried out could potentially violate certain rights. The word "forced" implied a summary event and, if the text were not read carefully, the use of that adjective could be somewhat misleading.

9. Arbitrariness and illegality lay at the core of the matter, and the question of force was, above all, more emotive linguistically insofar as it related to procedure. He therefore saw no inconsistency in using the words "arbitrary" and "illegal".

10. Mr. GRISSA said that Mr. Rattray had raised an important point. He wondered whether the restoration of a right through eviction could ever be considered a violation of rights.

11. Mr. ADEKUOYE, referring to the definition of "forced evictions" given in the sixth sentence of paragraph 3, suggested that the meaning of the word "homes" should be clarified, in view of the varying circumstances of occupancy and ownership of land.

12. The CHAIRPERSON recalled the suggestion made previously that the first part of the sixth sentence should be altered to read, "For the purposes of this General Comment that approach is followed and 'forced evictions' are defined as the permanent or temporary removal of individuals, families and/or communities from the homes and/or land which they occupy against their will, ...". That phrase had to be considered in conjunction with the remainder of the sixth sentence. No one had a right to stay in accommodation or on land which they had simply chosen to occupy, but the only way such persons could be evicted was in accordance with law. The rest of the general comment established the alternative emergency care to be provided for persons who were to be evicted.

13. Mr. PILLAY suggested that the phrase "against their will" would be better placed immediately following the word "removal".

14. Mr. GRISSA suggested that the verb "occupy" should be qualified by the adverb "legally". Did the general comment also apply to persons who had occupied property illegally?

15. The CHAIRPERSON said the central issue was that there should be no eviction of persons who legally occupied land. In the case of illegal occupation, the procedures to be followed and the consequences of eviction were dealt with in the general comment.

16. Mr. TEXIER said that the issues raised by Mr. Grissa presented daily challenges to the courts of law. He described the solution adopted in his own country where the parties to such disputes had to reach a negotiated settlement.

17. The forms and causes of occupation varied widely among countries and presented extremely complex legal situations. The ultimate aim should be to engage the parties in such a way as to protect the rights of owners and provide adequate compensation for harm or loss suffered, and, to the extent possible, to allow the occupants to remain in their settlements. He believed the term "illegal" was inappropriate to describe the action of a person without housing who had constructed improvised dwellings on land which did not belong to him.

18. The concepts of occupation and eviction were products of complex and varied factors and the purpose of the general comment was to highlight the obligation to find solutions to those problems.

19. Mr. WIMER ZAMBRANO observed that no agreement appeared to have been reached regarding the terms for key concepts relating to forced eviction. The question of eviction had different dimensions and the impression should not be conveyed that the Committee advocated preferential rights for individuals illegally occupying buildings or dwellings. The Committee was also concerned with legal occupation and legal eviction, given that the term "forced" did not automatically imply illegal occupation. He was satisfied with the overall tenor of the document. Wording could later be sought to reflect the situation of those who could be evicted legally, although not before alternative housing had been found for them. The matter of conflicting legislation in that connection would also need to be discussed.

20. The CHAIRPERSON suggested that the terminology to be used in paragraph 3 could be agreed upon at a later reading of the draft text.

Paragraph 4

21. Mr. GRISSA read out the following amended version of paragraph 4:

> "The practice of forced evictions is widespread and poses serious problems both in developed and developing countries. Due to the interrelation and interdependency that exists between all rights, forced evictions frequently violate other human rights. Thus, while manifestly violating the rights enshrined in the International Covenant on Economic, Social and Cultural Rights, it also directly contributes to the violation of civil and political rights. This clearly highlights the inappropriateness and futility of trying to draw an absolute division between economic, social and cultural rights on the one side and civil and political rights on the other."

22. Mr. SADI proposed that the last sentence of the amended text should be deleted. It was not for the Committee to pronounce upon the links between the various aspects of human rights.

23. Mr. PILLAY suggested that, for the sake of clarity, the pronoun "it" in the third sentence should be replaced by the words "the practice of forced evictions".

Paragraph 5

24. Mr. SADI said that, in contrast to the more restricted approach adopted in the Human Rights Committee, the General Comment tended to express views on related issues. He thought it preferable to focus attention strictly on the question of forced evictions.

25. The CHAIRPERSON observed that the Committee on Economic, Social and Cultural Rights had its own individual culture, and that the purpose of the General Comment was to extract conclusions from the Committee's total

experience in relation to the issue of forced evictions. The text could not be confined solely to the legal dimensions of the subject. He pointed out that forced evictions took place in northern and southern countries alike.

26. Mr. TEXIER supported the Chairperson's view that, while the issues considered by the Committee on Human Rights were firmly enshrined in international and national law, the earliest General Comment by the Committee on Economic, Social and Cultural Rights on the subject of the right to adequate housing (HRI/GEN/1/Rev.1) had been drafted only in 1991. The right to adequate housing and the right not to be subject to forced eviction were not yet clearly provided for in law, and their status as rights continued to be denied. For that reason the comprehensive style of the General Comment served a very necessary pedagogical purpose. Forced evictions occurred in all countries regardless of their level of development, and a low level of development could never be considered a justification for them. The full complexity of the issue should be conveyed with the greatest possible conciseness.

27. Mr. ADEKUOYE emphasized that the phenomena listed in the third sentence of the paragraph might be the result of action by elements other than States parties.

28. The CHAIRPERSON referring to the phrase "may be violated through a wide range of acts or omissions attributable to States parties", pointed out that such acts, when attributable to other perpetrators, were not directly addressed by the General Comment.

29. Mr. GRISSA, supported by Mr. SADI, suggested that the beginning of paragraph 5 should be amended to read "Though the practice of forced eviction may seem to exist mainly in populated urban areas, it in effect concerns also forced population transfers, internal displacement ... attributable to States parties". He proposed that the last two sentences of the paragraph should be deleted.

30. The CHAIRPERSON said that the circumstances of forced eviction evoked in paragraph 5 were of an illustrative rather than an exhaustive nature, focusing primarily on mass eviction attributable to States parties, while forced eviction as relating to private individuals was dealt with in paragraph 8.

31. Replying to a question by Mr. SADI concerning the phrase "the nature of economic, social and cultural rights", in the last sentence, the CHAIRPERSON cited the use of such a phrase in article 4 of the Covenant, and referred to an earlier suggestion that the words "as defined in the Covenant" should be added to the sentence.

32. Mr. SADI proposed that the word "nature" should be replaced by "principle".

33. Mr. ADEKUOYE, referring to the fourth sentence, said that the right to adequate housing and not to be subject to forced evictions "would be" - and not merely "might be", violated in the situations enumerated.

34. The CHAIRPERSON observed that Mr. Adekuoye's comment raised the other side of the issue: situations of justifiable transfer of large numbers of people in anticipation of natural disasters or in war situations, for their own safety but regardless of their wishes, which could be considered to constitute a violation. Such situations should not be considered to fall outside the scope of human rights guarantees simply because they were comparable to force majeure. He proposed that Mr. Pillay be asked to produce a revised draft based on the discussion in the Committee.

35. It was so agreed.

36. Mr. GRISSA asked whether evictions could be considered to be forced when they resulted from situations of natural disaster, or of war in which the State party concerned had disintegrated.

37. The CHAIRPERSON replied that, in such cases, governments were clearly not in violation of their obligations. However, numerous other cases existed of government-directed, forced population transfers for ethnic or other improper reasons. The text sought to cover both situations.

38. The CHAIRPERSON replying to a proposal by Mr. AHMED that the word "nature" in the last sentence should be replaced by "spirit" or "objective", suggested the alternative of placing the word "nature" in inverted commas followed by "spirit" and "objective" in brackets.

39. Mr. PILLAY volunteered to redraft the last sentence in such a way as to reflect the fact that it alluded to the wording of article 4 of the Convention.

40. Mr. CEVILLE observed that the aim of both the last sentence of paragraph 5 and paragraph 3 was to define what constituted an illegal eviction. The Committee might therefore wish to use the same wording in both cases.

41. The CHAIRPERSON said that, in fact, paragraph 5 referred to the limitations which States Parties might impose upon the right not to be subject to forced eviction whereas paragraph 3 dealt more generally with the enjoyment of that right.

Paragraph 6

42. Mr. GRISSA asked whether it was necessary to enumerate all the different circumstances in which forced evictions might occur, since the overriding problem surely was that they took place at all.

43. The CHAIRPERSON said that, while paragraph 5 dealt with massive and violent evictions during armed conflicts, paragraph 6 covered those which occurred in the name of development. There was a need to distinguish between the two phenomena and to give clear examples.

44. Mr. WIMER said he agreed that paragraph 6 was unnecessarily long. The second and third sentences identified two types of development projects, those which were necessary in the national interest and those which were undertaken

for prestige purposes. He proposed that a more concise formulation, clearly differentiating between the two types of project, should replace those two sentences. There would then be no need for a long list of examples.

45. He was concerned that there was no mention of poverty which, along with violence, was one of the root causes of evictions.

46. Mrs. JIMENEZ BUTRAGUEÑO sought assurance that if the second and third sentences were deleted, the reference to speculation, which was a major problem, would nevertheless be retained.

47. Mr. TEXIER said he agreed that the paragraph should be pared down to its key ideas, namely that some forced evictions were clearly justifiable, while others were less easily justifiable, such as those which occurred prior to international events; and others could not be justified at all, if speculation was the cause, for example.

48. Mrs. BONOAN-DANDAN said that the same reference should be made to house domolition, which was tantamount to eviction. The brief mention in paragraph 12 did not make that point clear. In her view, there was no clear distinction between evictions associated with violence and those which occurred in the name of development, since shanty-town clearance, for example, often led to extreme violence.

49. Mr. SADI said that, for the sake of clarity, the pronoun "they" at the beginning of the second sentence should be replaced by the phrase "forced evictions".

50. The CHAIRPERSON said that those suggestions would be taken into account during the preparation of the second draft.

Paragraph 7

51. Mr. GRISSA, referring to the second sentence of the paragraph, said it was not clear to him why the statement in article 2, paragraph 1 of the Covenant, to the effect that progressive achievement of the full realization of economic, social and cultural rights should be based upon the availability of resources, was not relevant in the case of forced evictions. Also, in the third sentence, it was not made explicit whether States should merely abstain from prohibited practices or should actively intervene to enforce the law.

52. The CHAIRPERSON said that the purpose of paragraph 7 was to refute the commonly held notion that, while it cost nothing to uphold civil and political rights, the realization of economic and social rights involved great expense. In fact, in the case of the right to adequate housing, States needed merely to ensure that third parties abided by the law and abstained from certain practices. It was often more expensive to violate the right to adequate housing, for example by evicting people from their homes to make way for so-called prestige projects, than it was to uphold it.

53. Mr. SADI said that it was not apparent in the fifth sentence how article 17, paragraph 1, of the Covenant complemented the right not to be forcibly evicted.

54. The CHAIRPERSON said that he would ask Mr. Pillay to redraft the relevant parts of the paragraph in clearer language.

Paragraph 8

55. Mr. SADI, referring to the first sentence of paragraph 8, said that there appeared to be an omission. It was stated that "the Covenant requires States parties to use 'all appropriate means'", but it was not made clear for what purpose they should do so. He suggested that the sentence should be redrafted to read as follows:

> "Article 2 (1) of the Covenant requires States parties to use 'all appropriate means, including particularly the adoption of legislative measures' to give effect to the Covenant".

56. Mr. GRISSA said that there was no need, in the fourth sentence, to include a list of persons acting under the authority of the State.

Paragraph 9

57. Mrs. JIMENEZ BUTRAGUEÑO requested an editorial change in the Spanish version of the text.

58. Mrs. BONOAN-DANDAN proposed that the word "prohibited" in the last sentence should be deleted, since there were no allowable forms of discrimination.

59. Mr. MARCHAN ROMERO said that, while paragraph 9 referred to women, children, youth, the elderly and various other groups, it must be made clear, perhaps through the addition of the words "inter alia" or "particularly", that they were not the only categories especially vulnerable to forced evictions and that the list was not exhaustive.

60. Mr. SADI proposed that the words "in situations of homelessness" at the end of the second sentence should be replaced by "when they are homeless".

61. Mrs. JIMENEZ BUTRAGUEÑO said that, while the text referred to discrimination against women in relation to property rights, in many countries women were also denied access to rented accommodation, since they were unable to sign leases. That had been the case in her own country, Spain, until 1975. The wording of paragraph 9 should be amended to reflect that problem.

62. The CHAIRPERSON said that it was not clear to him how the problem of women's lack of access to rented accommodation could be linked to the issue of forced evictions.

Paragraph 10

63. Mr. SADI proposed the addition, in the second sentence, of the words "which is compatible with the Covenant" after the words "warranted by law". He also suggested a number of ways in which the wording of the paragraph could be made more concise.

Paragraph 11

64. Mr. GRISSA said that since the paragraph spelled out circumstances that might justify evictions, the word "justifiably" should be added between the words "may" and "occur" in the first sentence.

65. Mr. SADI said that he did not understand activity (a): the remedy for racist or other discriminatory behaviour towards a neighbour was not eviction. It would in any case be necessary to indicate clearly what was meant by "discriminatory behaviour".

66. Mr. TEXIER said that he had a substantive objection to the whole paragraph. The Committee was treading on dangerous territory when it began enumerating justifiable instances of eviction. The list, as drafted, was hardly exhaustive and left the door open to more debatable justifications. Furthermore, the list combined obvious justifications such as non-payment of rent with more complicated nuisance issues. The paragraph could perhaps be deleted entirely; or it could be reformulated to state simply that evictions should be made with the approval in each case of the appropriate judicial authorities.

67. Mr. WIMER said that he too disliked incomplete lists. Moreover, the listing in paragraph 11 mixed objective grounds such as non-payment of rent with attitudes such as racism and was in the end unclear. At the very least, the first sentence needed redrafting, and it should be specified that the listing was not exhaustive.

68. Mrs. BONOAN-DANDAN said that the last sentence, which appeared to refer to State expropriation of land, was tangential and should be deleted.

69. The CHAIRPERSON, supported by Mr. PILLAY, suggested that the entire paragraph should be deleted.

70. Mr. RATTRAY recalled that the intention had been to include a paragraph on justifiable evictions, as a kind of teaching exercise, to counterbalance the prior discussion of illegal evictions.

71. Mr. TEXIER proposed that paragraphs 10 and 11 should be combined. The latter, however, should be reduced to a statement to the effect that evictions were sometimes justifiable, giving the objective, non-controversial example of non-payment of rent; and that evictions should always be officially authorized in accordance with due process and with laws not in contradiction with the objectives of the Covenant.

72. The CHAIRPERSON suggested that Mr. Pillay should be asked to redraft the two paragraphs along those lines.

73. It was so decided.

Paragraph 12

74. Mr. WIMER said that the paragraph would be made stronger by replacing "and/or" by "or" in the first sentence and by replacing the words "a punitive measure" by "punitive measures".

75. Mr. SADI observed that the first sentence could conceivably be taken to imply that if evictions and demolitions were not punitive they were consistent with the Covenant.

76. Mr. MARCHAN ROMERO proposed the insertion of the word "also" before the word "inconsistent", in order to obviate such an interpretation.

77. Mr. SADI, supported by Mr. MARCHAN ROMERO, said that while the 1949 Geneva Conventions and 1977 Protocols referred to in the second sentence were surely applicable, albeit indirectly, he felt that it might be inappropriate for the Committee to make a pronouncement, even in passing, on the applicability of another international instrument. He would therefore prefer to see the second sentence deleted.

78. The CHAIRPERSON, speaking in his personal capacity, pointed out that the Geneva Conventions and Protocols in question applied to international and internal armed conflicts. They referred, not only to the displacement of civilian populations and the destruction of private property but also to evictions, including mass evictions. The present paragraph could perhaps simply refer to international humanitarian law, the specific reference being deleted.

79. Mr. WIMER said that the reference in the second sentence to mass displacements, as they related to forced evictions, should be retained, even if the reference to the Geneva Conventions and Protocols was deleted.

80. Mr. TEXIER, supported by Mr. KOUZNETZOV and Mr. GRISSA, said that he favoured leaving the second sentence unchanged. It was important to make a reference to the Geneva Conventions and Protocols - which did not constitute an attempt to interpret those instruments - in order to note that mass displacements, a broader problem with which those instruments were concerned, were also a form of eviction.

81. Mr. AHMED, speaking also for Mr. ADEKUOYE, said that they were strongly in favour of keeping the reference to the Geneva Conventions and Protocols. The draft general comment thus far had dealt with individual evictions, and it now moved on to evictions of civilian populations in time of war. The sentence completed the picture usefully and marked another stage of thinking.

82. Mr. SADI said that he had no problem with maintaining a reference to the Geneva Conventions and Protocols. However, the Committee should simply take note of the obligations under those Conventions rather than drawing attention to them.

83. Mr. AHMED suggested that the Committee should "emphasize" those obligations.

84. The CHAIRPERSON suggested that Mr. Sadi and Mr. Ahmed should consult and propose a redrafted second sentence to Mr. Pillay.

85. It was so decided.

Paragraph 13

86. Mr. SADI, supported by Mr. PILLAY, proposed that the opening phrase "In these and any other circumstances in which" should be replaced by the word "When" and that the words "to be" after the word "deemed" should be deleted.

87. Mr. GRISSA, supported by Mr. AHMED, said that the last sentence was redundant since the paragraph itself was exhaustive.

88. Mr. TEXIER, supported by Mr. GRISSA, said that the word "reasonableness", in the reference to "the general principles of reasonableness and proportionality" at the end of the first sentence, made no sense in the French version. He believed that the reference to proportionality was sufficient and proposed deleting the word "reasonableness".

89. Mr. PILLAY objected to that deletion because, although the two words referred to virtually the same principle, the term always used in English legal doctrine and case law was "reasonableness", while "proportionality" represented the French usage. He felt that both terms were needed for clarity and he drew attention to the further use of the word "reasonable" in the third sentence of the paragraph.

90. The CHAIRPERSON, speaking in his personal capacity, said that while the word "proportionality" was used in both English and French in the European Convention on Human Rights, he agreed with Mr. Pillay that Anglo-Saxons unfamiliar with that Convention would always use the term "reasonableness". The solution would seem to be to eliminate the latter only in the French version.

91. It was so decided.

Paragraph 14

92. Mr. GRISSA, referring to the last two lines of the paragraph, said that the text would be clearer if the word "government" were deleted before the words "law enforcement officials", and if all that followed were deleted.

93. Mr. TEXIER, supported by the CHAIRPERSON, speaking in his personal capacity, observed that the logic of the paragraph was faulty. The Committee's list of procedural protections in the second sentence should begin with consultation (section (c)), followed by information on proposed evictions (section (b)) and then by reasonable notice of scheduled evictions (section (a)), before moving on to sections (d) to (g).

94. Mr. GRISSA said that sections (d) and (g) overlapped and should be combined.

95. Mr. WIMER observed that the measures advocated by the Committee in the second sentence were far too specific and might run counter to the provisions of domestic laws. The second sentence should be redrafted in more general terms, without going into details that were essentially a matter for local regulation.

96. Mr. PILLAY proposed the deletion, in section (a), of the phrase "at least 60 days" before the phrase "prior to the scheduled date of eviction", and the insertion of the words "adequate and" at the beginning of that section before the words "reasonable notice".

97. Mrs. BONOAN-DANDAN said that the word "adequate" was open to interpretation: it was not clear whether the notice was to be adequate for the person being evicted or for the evictor.

98. The CHAIRPERSON suggested that Mr. Pillay should be asked to redraft paragraph 14 on the basis of the comments made.

99. It was so decided.

The meeting rose at 6 p.m.